

### § 31.217

modification of the arrangement has certified that he or she:

(i) Is familiar with and will comply with the requirements of paragraph (a) of this section; and

(ii) Has no information of any violations or possible violations of paragraph (a) of this section, and will report immediately to the retained entity any subsequently gained information concerning a violation or possible violation of paragraph (a) of this section.

#### **§ 31.217 Confidentiality of information.**

(a) *Nonpublic information defined.* Any information that Treasury provides to a retained entity under an arrangement, or that the retained entity obtains or develops pursuant to the arrangement, shall be deemed nonpublic until the Treasury determines otherwise in writing, or the information becomes part of the body of public information from a source other than the retained entity.

(b) *Prohibitions.* The retained entity shall not:

(1) Disclose nonpublic information to anyone except as required to perform the retained entity's obligations pursuant to the arrangement, or pursuant to a lawful court order or valid subpoena after giving prior notice to Treasury.

(2) Use or allow the use of any nonpublic information to further any private interest other than as contemplated by the arrangement.

(c) *Retained entity's responsibility.* A retained entity shall take appropriate measures to ensure the confidentiality of nonpublic information and to prevent its inappropriate use. The retained entity shall document these measures in sufficient detail to demonstrate compliance, and shall maintain this documentation for three years after the arrangement has terminated. The retained entity shall notify the TARP Chief Compliance Officer in writing within five business days of detecting a violation of the prohibitions in paragraph (b), above. The security measures required by this paragraph shall include:

(1) Security measures to prevent unauthorized access to facilities and storage containers where nonpublic information is stored.

(2) Security measures to detect and prevent unauthorized access to computer equipment and data storage devices that store or transmit nonpublic information.

(3) Periodic training to ensure that persons receiving nonpublic information know their obligation to maintain its confidentiality and to use it only for purposes contemplated by the arrangement.

(4) Programs to ensure compliance with federal securities laws, including laws relating to insider trading, when the arrangement relates to the acquisition, valuation, management, or disposition of troubled assets.

(5) A certification from each key individual stating that he or she will comply with the requirements in section 31.217(b). The retained entity shall obtain this certification, in the form of a nondisclosure agreement, before a key individual performs work under the arrangement, and then annually thereafter.

(d) *Certification.* No later than ten business days after the effective date of the arrangement, the retained entity shall certify to the Treasury that it has received a certification form from each key individual stating that he or she will comply with the requirements in § 31.217(b). In making this certification, the retained entity may rely on the information obtained pursuant to paragraph (b) of this section, unless the retained entity knows or should have known that the information provided is false or inaccurate.

#### **§ 31.218 Enforcement.**

(a) Compliance with these rules concerning conflicts of interest is of the utmost importance. In the event a retained entity or any individual or entity providing information pursuant to 31 U.S.C. part 31 violates any of these rules, Treasury may impose or pursue one or more of the following sanctions:

(1) Rejection of work tainted by an organizational conflict of interest or a personal conflict of interest and denial of payment for that work.

(2) Termination of the arrangement for default.

(3) Debarment of the retained entity for Federal government contracting and/or disqualification of the retained

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entity from future financial agency agreements.

(4) Imposition of any other remedy available under the terms of the arrangement or at law.

(5) In the event of violation of a criminal statute, referral to the Department of Justice for prosecution of the retained entity and/or its officers or employees. In such cases, the Department of Justice may make direct and derivative use of any statements and information provided by any entity, its representatives and employees or any individual, to the extent permitted by law.

(b) To the extent Treasury has discretion in selecting or imposing a remedy, it will give significant consideration to a retained entity's prompt disclosure of any violation of these rules.

## PART 32—PAYMENTS IN LIEU OF LOW INCOME HOUSING TAX CREDITS

AUTHORITY: Public Law 111-5.

### § 32.1 Timing of disbursements.

(a) State housing credit agencies that receive funds under section 1602 of Division B of the American Recovery and Reinvestment Tax Act of 2009 must make subawards to subawardees to finance the construction or acquisition and rehabilitation of low-income housing no later than December 31, 2010. Any funds that are not used to make subawards by December 31, 2010, must be returned to the Treasury by January 1, 2011.

(b) The requirement in subsection (a) above does not prevent State housing credit agencies from continuing to disburse funds to subawardees after December 31, 2010 provided:

(1) A subaward has been made to the subawardee on or before December 31, 2010;

(2) The subawardee has, by the close of 2010, paid or incurred at least 30 percent of the subawardee's total adjusted basis in land and depreciable property that is reasonably expected to be part of the low-income housing project; and

(3) Any funds not disbursed to the subawardee by December 31, 2011, must

be returned to the Treasury by January 1, 2012.

[74 FR 44752, Aug. 31, 2009]

## PART 33—WAIVERS FOR STATE INNOVATION

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AUTHORITY: Sec. 1332, Pub. L. 111-148, 124 Stat. 119.

SOURCE: 77 FR 11715, Feb. 27, 2012, unless otherwise noted.

### § 33.100 Basis and purpose.

(a) *Statutory basis.* This part implements provisions of section 1332 of the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111-148, relating to Waivers for State Innovation, which the Secretary may authorize for plan years beginning on or after January 1, 2017. Section 1332 of the Affordable Care Act requires the Secretary to issue regulations that provide for all of the following:

(1) A process for public notice and comment at the State level, including public hearings, sufficient to ensure a meaningful level of public input.

(2) A process for the submission of an application that ensures the disclosure of all of the following:

(i) The provisions of law that the State involved seeks to waive.

(ii) The specific plans of the State to ensure that the waiver will meet all requirements specified in section 1332 of the Affordable Care Act.

(3) A process for the provision of public notice and comment after a waiver application is received by the Secretary of Health and Human Services, that is sufficient to ensure a meaningful level of public input and that does not impose requirements that are in addition to, or duplicative of, requirements imposed under the Administrative Procedures Act, or requirements that are unreasonable or unnecessarily